

Virginia Regulatory Town Hall Agency Background Document Proposed Regulation

Agency Name: Department of Social Services
VAC Number: 22 VAC 40-600-10 et seq.
Regulation Title: Food Stamp Program - Administrative Disqualification Hearings
Action Title: Mail Notification and Administrative Review
Date: June 7, 1999

Summary.

This regulation establishes procedures for conducting administrative hearings to determine if individuals have committed intentional violations of the rules and regulations of the Food Stamp Program. Amendments are proposed to reflect changes in procedures noted in the Code of Virginia and in federal regulations.

Basis:

Regulations at Title 7 of the Code of Federal Regulations ? 273.16 require states to determine whether intentional program violations have occurred in the Food Stamp Program either through referral to a court of appropriate jurisdiction or through an administrative disqualification hearing. ? 63.1-124 of the Code of Virginia allows the State to determine whether intentional program violations have occurred either through an appropriate court referral or through an administrative disqualification hearing. §63.1-116, §63.1-117, and §63.1-119 of the Code of Virginia establish the role of the Commissioner of Social Services or the designee in the appeal process.

Purpose:

The administrative disqualification hearing process establishes the procedures for impartial hearing officers and local social services agencies must follow to determine whether individuals have committed fraud against the Food Stamp Program in an attempt to apply or receive benefits to they are not entitled. The administrative hearing process is intended to protect the Food Stamp Program against abuse. The process also seeks to protect recipient households against frivolous or malicious actions by the local agencies by requiring the agencies to follow set procedures of introducing evidence or requiring hearing officers to be convinced of the intentional nature of clients' actions.

Substance:

Two substantive changes to the regulation are reflected. These changes allow for the notice of a hearing to be sent by regular mail and that the hearing may be held even if notice is returned as undeliverable. Provisions have been added that the hearing officer is required to verify the address, to the extent possible, and that an incorrect address will be considered good cause to generate a new hearing (22 VAC 40-600-70 and 22 VAC 40-600-140). The other change scattered throughout the regulation is the allowance of an administrative review rather than a subsequent appeal to the State Board of Social Services after a decision has been rendered.

Issues:

The substantive changes contained in the proposed regulations are actions that reflect changes in the Virginia Code or federal regulations for the Food Stamp Program. The changes do not favor recipient households more than local agencies nor would it seem that either faction is greatly harmed by the changes proposed in conjunction with the overall regulation.

Alternatives:

The agency will consider alternatives to the extent that they do not conflict with federal requirements. The agency has attempted to minimize the activities required through the hearing process so that the administrative process will be a reasonable alternative to local social services agencies to pursuing actions through the court system.

Public Comment:

The agency received only one comment during the comment period. The department altered a previous version of the regulation to reflect concerns of due process noted by the Office of the Secretary of Health and Human Resources for instances of incorrect addresses for hearing notices. These changes are contained in §22 VAC 600-70 and §22 VAC 600-140.

Clarity of the Regulation:

Staff of the Division of Temporary Assistance Program, the Inspector General and the Assistant Attorney General assigned to the department reviewed the regulation for clarity and understandability.

Periodic Review:

A review of the regulation will be conducted within the three-year cycle after the proposed regulation is effective. It is likely that the review will recommend the continuation of the regulation because of the federal and state desires for payment accuracy and program integrity.

Fiscal Impacts:

There are no fiscal impacts associated with the amendments of the administrative hearing regulation. Local agency staff must make referrals of intentional violations of program policy either through the courts or through an administrative process. The amendments noted here do not alter that referral process nor do the amendments change the percentage of funds local agencies are credited against the overissuances recovered from households when a determination is made that an intentional act occurred.